

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TAKESHI FUJISHIRO

Appeal No. 1998-0205
Application No. 08/464,150

ON BRIEF

Before THOMAS, FLEMING, and BLANKENSHIP, Administrative Patent Judges.

BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of Claims 5 and 8.

We affirm.

BACKGROUND

The invention is directed to a cassette holder moving mechanism for a magnetic video cassette player/recorder. Claim 5 is reproduced below.¹

5. A magnetic recording and reproduction apparatus having a main unit with a base chassis, and a cassette holder defining front, rear, and opposite sides and adapted to hold a box-type cassette case having a wound magnetic tape, comprising:

a slide chassis slidably provided in said main unit for holding said cassette holder such that said cassette holder is capable of being vertically moved between an up position and a down position, wherein said cassette holder remains substantially level while ascending and descending between said up and down positions;

a first moving mechanism and a second moving mechanism which are operatively connected between said cassette holder and said slide chassis and are disposed at respective opposite sides of said cassette holder, wherein said first moving mechanism and said second moving mechanism guide said cassette holder between said up and down positions while maintaining said cassette holder substantially level;

connecting means for synchronously connecting said first and second moving mechanisms, and ensuring that said cassette holder remains substantially level and substantially parallel to said slide chassis, comprising:

a rack and a pinion engaging with said rack and provided at one end of each moving mechanism; and

a connecting rod rotatably supported on said cassette holder and having said pinions mounted to both ends of said connecting rod.

¹ We note that the preliminary amendment filed June 5, 1995 (Paper No. 3) directed cancellation of Claims 1-4, but the amendment has not been formally entered. Also, appellant's amendment filed December 22, 1995 (Paper No. 6) incorrectly directed amendment and re-entry of Claim "1." Consistent with appellant's appendix of claims with the Brief, we take amended Claim "1" in the file wrapper to be Claim 5.

Appeal No. 1998-0205
Application No. 08/464,150

The examiner relies on the following references:

Park	4,757,400	Jul. 12, 1988
Kim	5,355,265	Oct. 11, 1994
		(filed Jun. 19, 1992)

Claims 6 and 7 are objected to as depending from a rejected base claim. Earlier rejections of Claim 9 have been withdrawn.

Rejections of Claims 5 and 8 remain for our review. Claim 5 stands rejected under 35 U.S.C. § 102 as being anticipated by Kim. Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Kim and Park.

We refer to the Final Rejection (Paper No. 7), the Examiner's Answer (Paper No. 14), the Supplemental Answer (Paper No. 16), and the Second Supplemental Answer (Paper No. 18) for a statement of the examiner's position and to the Brief (Paper No. 13), the Reply Brief (Paper No. 15), and the Second Reply Brief (Paper No. 17) for appellant's position.

OPINION

Claim 5 stands rejected under 35 U.S.C. § 102 as being anticipated by Kim. The examiner contends that the claim reads on the structures of Kim as pointed out on pages 3 and 4 of the Answer.

Appellant submits two main arguments to the contrary. First, appellant submits that Kim “does not disclose a cassette holder which ‘remains substantially level while ascending and descending

between said up and down positions,’ as expressly required by claim 5.” (Brief, page 5.) Second, appellant argues that Kim “does not disclose the connecting means of the claimed invention.” (Id. at 7.)

The thrust of appellant’s first argument appears based on an erroneous reading of the reference. On pages 5 and 6 of the Brief appellant argues that the reference “tilts” the housing for removal of the magnetic tape. Appellant refers to Figure 1A of Kim and argues that “the Kim device is pivotably fixed at the end opposite to the cassette opening.” (Brief, page 7.) “One end of the Kim housing is anchored while the other is raised, to effectuate the open-by-tilting method.” (Reply Brief, page 3.) Appellant does not point out where the structure for “fixing” or anchoring one end of the cassette holder 11 in Kim is thought to exist.

Contrary to appellant’s interpretation, the written description of Kim, as at column 1, lines 21 through 22, refers to “lifting and lowering links 13a and 13b,” and the remainder of the disclosure makes clear that the entire extent of cassette holder 11 is moved up and down. Compare Figure 1A with Figure 1B -- the end of the cassette holder opposite from tape 10 is higher in Figure 1A. The reference does not refer to cassette holder 11 as “tilting,” contrary to appellant’s implication. Kim instead refers to the holder as being lifted and lowered.

To the extent appellant may argue that there is a certain degree of tilt during raising and lowering of cassette holder 11 in the reference, we agree with the assessment. Figure 1A of the

reference shows a slight degree of tilt of the holder. The relevant issue is whether the claims distinguish over the degree of tilt disclosed by the reference.

The word “substantially” has more than one distinct connotation, but one accepted meaning is “being largely but not wholly that which is specified.” Webster’s Ninth New Collegiate Dictionary, 1990. As such, “substantially” often finds use as a broadening term in claim drafting. Appellant does not point to anything in the specification that discloses that the invention requires that the cassette holder be absolutely, or near absolutely, level or parallel with the slide chassis. Appellant does not point to anything in the specification that sets forth any range, narrow or otherwise, with respect to what may be considered “substantially level,” or “substantially parallel to [the] slide chassis,” as the terms are used in Claim 5.

We therefore consider the scope of Claim 5, with respect to the recitations “substantially level,” and “substantially parallel to [the] slide chassis,” to include structures as shown in Figures 1A and 1B of Kim. Claims are to be given their broadest reasonable interpretation during prosecution. See In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404, 162 USPQ 541, 550 (CCPA 1969).

We also find appellant’s second argument unconvincing. As set out on page 7 of the Brief, appellant submits that “[t]he purpose of the housing shaft 14 and associated gears 14a and 13c, as

taught by Kim, is to rotate the appendage 20 90 degrees around the pivot 20a as shown in Figs. 4A and 4B.” However, the examiner finds, as set forth for example on page 8 of the Answer, the “purpose” of the shaft and gearing alleged by appellant is an ancillary function of the structures disclosed by Kim, and indeed appellant discloses a similar ancillary function associated with the disclosed “connecting means.”

As detailed in column 1 of Kim, a rack gear 13c is engaged with a connecting gear 14a of a housing shaft 14 so that the links 13a and 13b are driven simultaneously. As shown in Figure 1C, Kim discloses one end of shaft 14 with the associated rack and pinion assembly, with the other end of shaft 14 and the opposite rack and pinion assembly shown in Figures 1A and 1B. In Figures 1A and 1B, gearing (without reference numerals) is shown at one end of lifting and lowering link 13a, apart from rack and pinion assembly 13c and 14a. Comparison of Figures 1A, 1B, and 1C reveals that lifting and lowering of cassette holder 11 is accomplished by transmission of driving force from one side (Figures 1A and 1B) to the other side (Figure 1C) by means of rotation of shaft 14. The shaft and associated rack and pinion assemblies thus perform the function that appellant alleges is missing from the reference; namely, as set forth in Claim 5, “ensuring that [the] cassette holder remains substantially level and substantially parallel to [the] slide chassis.”

We add to the examiner’s findings by pointing out that Figures 1A, 1B, 1C, and 2 are described as conventional structures, apart from Kim’s emphasis on the novel ancillary function of

Kim's invention revealed in Figures 3, 4A, 4B, and 5. Appellant thus argues about a portion of Kim that can be considered irrelevant to the instant anticipation rejection, since the conventional structures as represented by Figures 1A, 1B, 1C, and 2 of Kim show all that is required by instant Claim 5.

Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Kim and Park. As set forth in the Answer and the Supplemental Answer, the examiner finds there is express suggestion in Park for providing a "damper means" as claimed. Park's disclosure, particularly at column 4, lines 21 through 29, provides evidence of prior art recognition regarding the advantage of a "damper means" for damping upward movement of cassette holders.

Appellant argues in the Brief (page 9) that the examiner relied on hindsight knowledge of appellant's disclosure for motivation to combine the references. We consider the allegation to be factually incorrect. Appellant does not address the clear suggestion in Park for provision of a "damper means." To the extent appellant's comments may allege that the artisan would not have combined the teachings of the references because of perceived differences between the cassette loaders of Kim and Park, appellant has not convincingly explained, nor provided evidence to show, that the allegation is factual. As we have noted previously herein, appellant's interpretation of Kim as disclosing a "tilting" mechanism appears based on a flawed reading of the reference.

Since appellant has not shown either rejection to be in error, we sustain the Section 102 rejection of Claim 5 and the Section 103 rejection of Claim 8.

Appeal No. 1998-0205
Application No. 08/464,150

Appeal No. 1998-0205
Application No. 08/464,150

CONCLUSION

The rejections of Claims 5 and 8 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

JAMES D. THOMAS)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
MICHAEL R. FLEMING)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
HOWARD B. BLANKENSHIP)	
Administrative Patent Judge)	

Appeal No. 1998-0205
Application No. 08/464,150

HBB/caw

Appeal No. 1998-0205
Application No. 08/464,150

SUGHRUE, MION, ZINN, MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20037-3202